

Disciplinary Settlement Agreement

The following terms and conditions of this Disciplinary Settlement Agreement ("Agreement") shall constitute full and complete resolution of the disciplinary action against **Ian Hawkey #4393** ("Employee") by the City of San Jose ("City") based upon the allegations stated in the Notice of Intended Discipline dated June 22, 2018, ("NOID"), attached hereto as **Exhibit-A**, and incorporated herein by reference.

1. Employee admits the allegations of misconduct set forth in the NOID (Exhibit A). Employee admits that his conduct in this regard is cause for discipline pursuant to the San Jose Municipal Code Section 3.04.1370, subdivisions (B), (E), and (V).
2. In resolution of this disciplinary action, Employee will receive a suspension from his position of Police Officer for a period of sixty (60) hours effective July 30, 2018, and the City agrees to hold dismissal from City service in abeyance.
3. In consideration for holding the dismissal from City service in abeyance, Employee understands and agrees that during the term of this Agreement:
 - a. Employee shall not engage in conduct similar to what was sustained in the NOID dated June 22, 2018, and the Police Department Investigation, violating the San Jose Police Department Manual Sections L2111 Pursuit Communications, L2113 Continuation or Termination of Pursuit, L2605.5 Tactical Conduct, L2614.5 Shooting at Moving Vehicles and L4435 Body Worn Camera Policy.
 - b. Employee shall attend "Force Options Training" and "Pursuit Training" to be conducted by the Police Department's Training Unit and completed within six months of the execution of this Agreement.
4. Should Employee fail to fully comply with or breach any terms of this Agreement, Employee agrees that the City shall have the right to issue a Notice of Reinstated Discipline automatically imposing the dismissal being held in abeyance pursuant to paragraph 2, above.
5. In the event that Employee violates this Agreement, Employee will be notified of such breach by letter and will be given the opportunity to request an informal conference with the City Manager or designee. Any request for an informal conference with the City Manager or designee must be requested by the Employee within ten (10) days from the date of the letter notifying Employee that this Agreement has been violated. This informal conference must be held within twenty-one (21) calendar days of the date of the letter notifying Employee that this Agreement has been violated, unless the parties mutually agree to delay the informal conference. Instead of an informal conference, Employee may elect to respond in writing. Any such written response must be submitted within twenty-one (21) calendar days of the date

of the letter notifying Employee that this Agreement has been violated. The City Manager or designee shall have the final and full discretion to determine whether a breach of this Agreement has occurred and whether to issue a Notice of Reinstated Discipline. A Notice of Reinstated Discipline, if determined to be appropriate by the City Manager or designee, shall be served by letter, hand-delivered or by U.S. mail, to employee's home address on file with the Human Resources Department and shall designate the effective date of the discipline. Employee hereby agrees to waive any and all rights to appeal the Notice of Reinstated Discipline as set forth in Section 6 below.

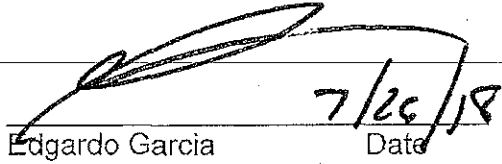
6. Employee is aware of the provisions of the San Jose Municipal Code Sections 3.04.1380 and 3.04.1390 and Section 25.8 of the Memorandum of Agreement between the City of San Jose and San Jose Police Officers' Association, copies of which are attached hereto and incorporated herein as **Exhibit-B**. Further, employee is aware of the Public Safety Officers Procedural Bill of Rights Act under California Government Code Section 3300 et seq. Employee represents that he has read and understands these provisions. Employee understands and agrees that he knowingly and willingly waives any right of notice or appeal under these provisions and any and all other administrative or judicial review of the restrictions imposed pursuant to the terms of this Disciplinary Settlement Agreement, including without limitation the dismissal contained herein, as well as any Notice of Reinstated Discipline that may be imposed pursuant to paragraph 4 above. Employee further agrees and hereby waives his right to file any and all appeals and supplementary proceedings before the Civil Service Commission and any action, judicial, arbitral, or administrative, which may or may not have heretofore been instituted in regard to or in any way related to this disciplinary matter.
7. This Agreement is effective when signed by all of the persons designated below and shall expire, if no breach occurs, three years from the effective date. Upon expiration, the usual rights and remedies of the employee and employer resume.
8. This Agreement constitutes the entire agreement between Employee and the City with respect to any matters referred to in this Agreement. This Agreement supersedes any and all of the other agreements between Employee and the City.
9. This Agreement shall not establish precedent for future proposed disciplinary actions and therefore shall not obligate the City to offer or enter into a settlement agreement in the future related to this Employee or other City employees. However, the City may take into consideration the conduct referenced in the NOID, and the sixty (60) hour suspension set forth in

paragraph 2, above, with regard to any future disciplinary action taken against Employee.

10. Employee acknowledges that he is knowingly and voluntarily entering into this Agreement and that he has had the opportunity to consult with a representative of his choosing prior to executing the same.

For Employer:

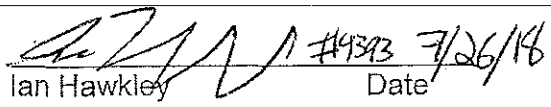
City of San Jose


Edgardo Garcia
Chief of Police

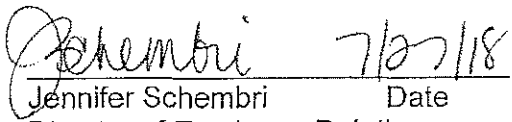
7/26/18
Date

For Employee:

Ian Hawkley


Ian Hawkley

#4373 7/26/18
Date


Jennifer Schembri
Director of Employee Relations

7/27/18
Date

Approved as to form:


Matthew Pritchard
Deputy City Attorney

Approved as to form:


Sean Pritchard
San Jose Police Officers Association

c: SJPD Personnel File
Human Resources Personnel File

Exhibit A



San José Police Department

June 22, 2017

Officer Ian Hawkey # 4393
201 W. Mission Street
San Jose, CA 95110

Re: Notice of Intended Discipline

Dear Officer Hawkey:

This letter is to notify you of my intent to recommend to the City Manager that you be terminated from your position of Police Officer (2215) in the San Jose Police Department.

The proposed disciplinary action is based upon the following:

1. On or about June 17, 2017 you were involved in an unauthorized vehicle pursuit. You did not notify communications of the pursuit, failed to terminate the pursuit, used improper tactics, discharged your firearm at a moving vehicle, and failed to properly activate your Body Worn Camera.

This conduct is cause for discipline pursuant to San Jose Municipal Code Section 3.04.1370:

- (B) Misconduct
- (E) Failure to observe applicable rules and regulations
- (V) Any other act, either during or outside of duty hours which is detrimental to the public service.

Your conduct is in violation of San Jose Police Department Duty Manual Sections L 2111 – Pursuit Communications, L 2113 – Continuation or Termination of Pursuit, L 2602.5 – Tactical Conduct, L 2641.5 – Shooting at Moving Vehicles, and L 4435 – Body Worn Camera Policy.

Information supporting the charges above is contained in the attached material and is incorporated herein by reference.

In addition to considering the significance of the acts noted above, I have also reviewed your personnel history and noted that you have been employed with the City of San Jose since October 10, 2014. I have also noted the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Before the proposed discipline is implemented, you have a right to request a pre-disciplinary *Skelly* conference, which provides you an opportunity to respond and provide relevant information. Because this is not an evidentiary hearing, you have no right to call or to cross-examine witnesses. However, you may be represented by a union representative or legal counsel.

If you desire to exercise your right to a *Skelly* conference in this matter, you must make the request by notifying the Secretary of the Assistant Chief of Police at (408) 277-4214 within seven (7) calendar days of service of this notice upon you. Provided you make the request in a timely manner, then a pre-disciplinary *Skelly* conference will be scheduled and conducted as soon as possible.

Instead of a conference, you may elect to respond in writing. Any such written response must be submitted within seven (7) calendar days of service of this notice upon you. Any request to extend the seven (7) calendar day period must be made in writing within the seven (7) day period and must include the reasons for the extension.

If you do not choose to exercise your pre-disciplinary *Skelly* rights, the effective date of the discipline will be the soonest possible date following the seven (7) calendar days in which you have to exercise your *Skelly* rights. You will receive a Notice of Discipline that will specify the effective date of the discipline. If you request a *Skelly* conference or submit a written response, a determination on the recommended disciplinary action will be made after consideration of the information you provide. If the City decides to proceed

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Notice of Intended Discipline
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with formal disciplinary action after the *Skelly* process, you will receive a Notice of Discipline that will contain the actual effective date of the disciplinary action.

Please be aware that it is a violation of the City's Non-Retaliation Policy (City Policy Manual Section 1.1.4) to retaliate in any way against any person who participates in making a complaint, provides information, or otherwise participates in an investigation related to misconduct or violations of City policies or regulations.

Sincerely,

Edgardo Garcia
Chief of Police

for *K. Munez* #2681
Lt. Brian Matchett #3302
Commander
Internal Affairs Unit

EG:bm

Enclosure

cc: Office of Employee Relations

3.04.1380 - Disciplinary action - Notice requirements.

- A. The appointing authority may take disciplinary action against an employee for one or more of the causes for discipline specified in this part, as follows:
1. Where the contemplated discipline is a demotion, dismissal or suspension, by personally serving the employee with a written "notice of intended discipline," setting forth the specific nature thereof, the length and commencement date if it be a suspension, and the reasons for the proposed discipline, along with a copy of the charges and materials upon which the action is based. Said "notice of intended discipline" shall also advise the employee that he has five calendar days in which to respond either personally or in writing at an informal hearing before the department head making the charges or the appointing authority or the person designated by either and may appear with counsel or representative, to show cause, if any, why such discipline should not be imposed; provided, however, that said five-day period may be extended by department head or appointing authority upon the employee's timely request in writing and for reasons of employee's convenience and necessity.
 - B. No disciplinary action of any type or duration shall be valid unless a formal written notice thereof is served upon the employee and filed with the secretary of the commission within seventy-two hours of the effective date of the discipline. Such notice of suspension, demotion or dismissal shall be served upon the employee either personally or by mail and shall include:
 1. A statement of the nature of the disciplinary action;
 2. A statement in ordinary, concise language of the acts or omissions upon which the causes are based;
 3. The effective date of the action; and
 4. A statement advising the employee of his right to answer and setting forth that the response must be made within the time period specified in the notice of suspension, demotion or dismissal, if his answer is to constitute an appeal.
 - C. The procedures set forth hereinabove shall not apply to probationary employees who are rejected from probation, pursuant to Section 3.04.1010 of the San José Municipal Code.
 - D. The procedures set forth hereinabove shall not preclude an employee from entering into a written agreement with the city to settle a pending disciplinary matter, and further shall not preclude an employee from waiving any of the notice provisions, hereinabove provided for, as part of that written settlement agreement. A copy of any such disciplinary settlement agreement shall be filed with the commission.

(Prior code § 2016.5; Ords. 20017, 20893.)

3.04.1390 - Answer to notice of discipline - Filing.

Not later than twenty days after service of the notice of disciplinary action, the employee may file with the commission a written answer to the notice, which answer shall be deemed to be a denial of all of the allegations of the notice of disciplinary action not expressly admitted, and a request for hearing or investigation as provided in this part. With the consent of the commission, an amended answer may be filed. If the employee fails to answer within said twenty calendar days, or after answer withdraws his appeal, the disciplinary action taken by the appointing authority shall be final. A copy of the employee's answer, and of any amended answer, shall be given promptly by the secretary of the commission to the appointing authority.

(Prior code § 2016.6; Ord. 20801.)

25.8 Disciplinary Grievances

- 25.8.1 Employees in the bargaining unit shall only be disciplined for cause. Discipline is defined to include those matters that are cognizable before the Civil Service Commission plus disciplinary transfers.
- 25.8.2 Persons on probationary status (entry-level or promotional) may not appeal under this agreement rejection on probation.
- 25.8.3 Letters of reprimand may be appealed under this section only to the City Manager level.
- 25.8.4 Documented Oral Counselings (DOCs) retained by the Internal Affairs Division may be appealed under this section only to the level of Assistant Chief of Police. However, should a particular DOC be the result of the Assistant Chief's having reduced a higher form of discipline to a DOC with which the affected officer is still dissatisfied, such DOC may be appealed to the level of the Chief of Police. DOCs received for preventable, automobile accidents shall not be appealable unless the officer contends that the accident was not preventable.
- 25.8.5 Nothing herein constitutes a waiver of rights of employees otherwise granted by law (e.g., Government Code Sections 3300 et. seq.).
- 25.8.6 An employee challenging a suspension, demotion, dismissal or disciplinary transfer shall have the option of choosing between the dispute-resolution provisions of this Agreement, or appeal to the Civil Service Commission. Any employee who wishes to preserve the right of appeal to the Commission must comply with the time requirements for filing such appeal as specified in the Civil Service Rules. Within twenty (20) days of the date of a Notice of Discipline, the employee may file an appeal with the Civil Service Commission or pursue the grievance procedure or both. The grievance procedure shall begin at Step IV Arbitration for this process. Immediate arbitration shall not apply.
- 25.8.7 The employee shall confirm his/her election of remedies in writing to the Director of Employee Relations. If the employee files an appeal to the Civil Service Commission and also an appeal through the grievance procedure of this Agreement within the required timelines, the election of remedies must be made no later than 45 days from the date of the Notice of Discipline. The election of remedies must also be made prior to the submission of a request for a list of arbitrators and prior to scheduling a Civil Service Commission appeal hearing. As otherwise provided in this Agreement, for the matter to go to binding arbitration, the Organization must agree (i.e., must be the party taking the matter to arbitration).